

## REMARKS

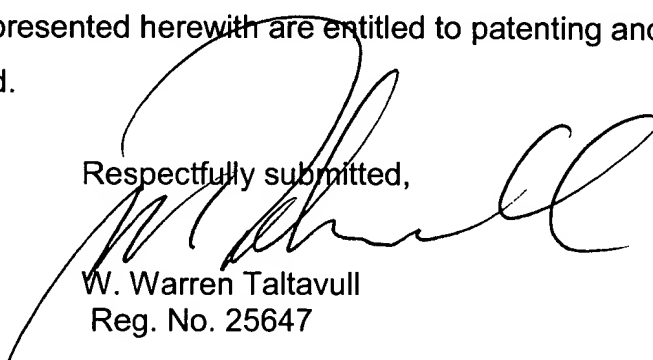
Reconsideration and allowance are respectfully requested and entry of this amendment after final is believed appropriate since the foregoing amendments reduce the issues for appeal at least by removing the rejection under Section 112.

Applicant gratefully acknowledges the interview granted by the Examiners in charge of this case. At the interview, counsel proposed amendments to claims 1, 14 and 24 to satisfy the outstanding rejection under section 112. Specifically, in the Office action, the Examiner determined that there is no support for the phrase "a drive arm" and "said drive arm being located to one side of the said one of the first and second clamping means to apply the high cycle load transversely to the low cycle load ". As pointed out at the interview, it is believed that this rejection can be satisfied by simply referring to the "drive arm" as "the drive member" as this expression is fully supported in the present specification at page 8, in the paragraph beginning at line 22. Moreover, specific examples of a drive member in the form of a drive rod and an excitation spring are set forth. In addition, as clearly shown in figures 1 and 2, the actuator 26 is located at one side of one of the first and second clamping means 16 and 18. Thus there is clearly no new matter in the claims as now amended.

The pending claims also stand rejected as obvious over Owen et al in view of Gram. As explained at the interview and in the response filed December 2, 2002, Owen et al does not disclose the transverse application of anything to the specimen. Regarding the combination with Gram, neither of these references discloses a drive member positioned to apply transverse vibrations to a specimen from one side of the specimen or as claimed a high cycle load transverse to a low cycle load. As previously pointed out, in Owen et al, the vibrational force is clearly imparted axially of the specimen in each of the forms of the test setup disclosed. The same is true of the patent to Gram, namely, only axial loads are

applied to the specimen. Thus neither of the applied references nor the other references of record suggests acoustically and mechanically coupling an actuator to a specimen to apply a high cycle transverse load to a test specimen with an arrangement as claimed in claims 1, 14 and 24 of the present application. In the absence of any suggestions much less any specific teachings in this art, it is believed that the claims as presented herewith are entitled to patenting and the same is respectfully solicited.

Respectfully submitted,



W. Warren Taltavull  
Reg. No. 25647

Customer No. 20736  
202 261 1047

**Fax 202 887 0336**  
[wtaltavull@mdslaw.com](mailto:wtaltavull@mdslaw.com)